



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 36

RIN 2900-AO65

Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition Under the Truth-in-Lending Act

AGENCY: Department of Veterans Affairs.

ACTION: Agency determination; status of interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) published an interim final rule on May 9, 2014, implementing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). This document informs the public that VA will not be publishing a final rule to adopt the provisions in the interim final rule that published on May 9, 2014. However, VA will be publishing a separate regulation in the near future that will supersede the provisions in the interim final rule that published on May 9, 2014.

DATES: This document is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Greg Nelms, Assistant Director (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 632-8795. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 9, 2014, VA published in the Federal Register (79 FR 26620) its interim final rule (IFR) pursuant to the Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010). Among other things, the Dodd-Frank Act established many

reforms to Federal oversight of residential mortgage lending, including a requirement that lenders be able to demonstrate that, at the time a mortgage loan is made to a borrower, the borrower is reasonably able to repay the mortgage loan. Public Law 111-203, sec. 1411 (codified at 15 U.S.C. 1639c). Such mortgage loans are referred to generally as qualified mortgages (QMs).

VA specified in the IFR that almost all VA loans meeting VA's underwriting standards would be considered safe harbor QMs. 79 FR 26622-26623. The loans that would not be considered safe harbor QMs would be certain Interest Rate Reduction Refinance Loans (IRRRLs), specifically those meeting the requirements for guaranty but failing to meet IRRRL-specific seasoning and recoupment requirements for safe harbor protections. While these types of IRRRLs could still be deemed QMs, they would receive the designation of rebuttable presumption QM rather than safe harbor QM. 79 FR 26624. VA also specified income verification requirements for IRRRLs. *Id.*

VA received a total of 22 comments on the IFR. Most of the commenters were industry participants in the VA Home Loan program or representatives of the lending community. A few individuals also commented. No comments were received from veterans' service organizations or veterans expressing concerns about the use of their VA home loan benefit. Most commenters sought clarification of the IFR. Several commenters were fully supportive of the rule. VA appreciates the comments received on the IFR.

On May 24, 2018, section 309 of Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115-174) superseded certain elements of the IFR. The law's seasoning and recoupment requirements for IRRRLs effectively eliminated the category of

rebuttable presumption QM. Section 309 also imposed other requirements that, while not in conflict with the IFR, were not contemplated at the time of the IFR's publication.

Consequently, rather than finalizing the IFR, VA will need to revise its qualified mortgage criteria in a future rulemaking. VA will in its future rulemaking take into account the spirit of the comments submitted in response to the IFR. Until such future rulemaking is final, the IFR remains in effect. To the extent any provision of the IFR conflicts with or is superseded by Public Law 115-174, Public Law 115-174 controls.

On May 25, 2018, VA released a policy guidance update in Circular 26-18-13 to inform program participants about the impact of Public Law 115-174 on VA home loan financing. Loan applications taken on or after May 25, 2018 must meet the requirements of the new law to be eligible for guaranty by the VA.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on September 26, 2018, for publication.

Dated: September 26, 2018

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Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

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